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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/080,652	02/22/2002	Gregory B. Altshuler	P00547/70076 PLC	8139
23628	7590	03/29/2005	EXAMINER	
WOLF GREENFIELD & SACKS, PC FEDERAL RESERVE PLAZA 600 ATLANTIC AVENUE BOSTON, MA 02210-2211			SHAY, DAVID M	
			ART UNIT	PAPER NUMBER
			3739	

DATE MAILED: 03/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	Application No. 10/080,652	Applicant(s) ALTSHULER ET AL.	
	Examiner david shay	Art Unit 3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on November 18, 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4,6-17,19-30,32,34-72,74,76-85 and 88-91 is/are pending in the application.
- 4a) Of the above claim(s) See Continuation Sheet is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,9,10,13,19-21,25,27-30,32,41,47,48,51,52,59-61,66,67,69-72,74,84 and 85 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>see action</u> . | 6) <input type="checkbox"/> Other: _____  |

Continuation of Disposition of Claims: Claims withdrawn from consideration are 6-8,11,12,14-17,22-24,26,34-40,42-46,49,50,53-58,62-65,68,76-83 and 88-91.

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The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-4, 9, 19-21, 25, 27, 32, 41, 47, 51, 59-61, 66, 67, 69, 74 and 84 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Eckhouse ('478).

See Figures 2 and 9-16; column 5, line 9 to column 6 line 56; and column 8, line 36 to column 13, line 25.

Claims 28-30 and 70-72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eckhouse ('478) in combination with Currey. Eckhouse ('478) teaches a device such as claimed except the concave surface. Currey teaches a device such as claimed except concentrating the beam. It would have been obvious to the artisan of ordinary skill to employ the concentrating waveguide in the device of Currey, since this provides better tissue penetration, as taught by Eckhouse ('478) or to employ the concave vacuum contact surface of Currey with device of Eckhouse ('478), since this provides a most favorable condition for the tissues to be subjected to the action of the radiation, as taught by Currey, thus producing a device such as claimed.

Claims 1, 4, 10, 47 and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eckhouse ('478) in combination with Anderson et al ('041). Eckhouse ('478) teaches device such as claimed except the diffuse reflector. Anderson et al teaches the use of a diffuse reflector in a light applicator. It would have been obvious to the artisan of ordinary skill to employ a diffuse reflector in the device of Eckhouse ('478) since this provides more uniform illumination, as taught by Anderson et al ('041) thus producing a device such as claimed.

Claims 1, 4, 13, 47, and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eckhouse ('478) in combination with Hollnagel. Eckhouse ('478) teaches a device such as

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claimed except the second reflector element. Hollnagel teaches a device as claimed except the dimension of greater than 10 mm. It would have been obvious to the artisan of ordinary skill to include the reflective coating arrangement of Hollnagel in the device of Eckhouse ('478), since this would increase the efficiency thereof, or to employ the waveguide dimensions of Eckhouse ('478) in the device of Hollnagel, since this is a desirable design for cutaneous surgery, as taught by Eckhouse ('478) thus producing a device such as claimed.

It is noted that claim 8, erroneously treated in the previous office action is dependant from non-elected claim 7 and is thus non-elected as well. Claim 8 has not been further treated.

Applicant's arguments with respect to claims 1-4, 9, 10, 13, 19-21, 25, 27-30, 32, 41, 47, 48, 51, 52, 59-61, 66, 67, 69-72, 74, and 84 have been considered but are moot in view of the new ground(s) of rejection.

This is a Request for Continuing Examination of applicant's earlier Application No. 10/080,652. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

The Information disclosure statement filed January 10, 2003; November 17, 2003; June 7, 2004; and June 28, 2004 have been considered as indicated by the attached copies.

Any inquiry concerning this communication should be directed to david shay at telephone number (571) 272-4773.

A handwritten signature in black ink, appearing to read "david shay", is positioned above the printed name and title.

DAVID M. SHAY  
PRIMARY EXAMINER  
GROUP 330